

**MAY 12, 2004**

**SCHAKOWSKY VOWS TO PROTECT CIVIL JUSTICE RIGHTS OF MEDICAL MALPRACTICE VICTIMS**

**WASHINGTON, D.C. - U.S. Representative Jan Schakowsky (D-IL) today vowed to continue to vote against any measures that would limit the civil justice rights of victims of medical malpractice. She added that Republicans are more interested in protecting the profits of the insurance companies instead of lowering health care costs for patients and insurance rates for doctors.**

**Schakowsky, who is a member of the Energy and Commerce Committee, inserted the following statement in the Congressional Record in opposition to H.R. 4280:**

**Mr. Chairman, I rise today in opposition to out-of-control medical malpractice premiums but also in opposition to H.R. 4280. Once again, we are being asked to vote on a bill that claims to be a solution to a very real problem but which will simply not do the job of lowering premiums. Once again, we are being asked to vote on legislation that ignores the major component in the medical malpractice insurance crisis - insurance.**

**A study of the medical malpractice situation in my state of Illinois found last year that there was little, if any, correlation between medical malpractice payments and medical malpractice premiums. The Americans for Insurance Reform report found that the amount of jury awards and settlements has actually declined since 1991, below the rate of medical inflation. In constant dollars, the amount of medical malpractice jury awards and settlements per doctor has decreased over the past decade in Illinois.**

**As providers in my state know all too well, their medical malpractice premiums are going in the opposite direction. Instead of tracking payouts, they are tracking economic conditions and insurance company investment decisions. Imposing arbitrary caps on non-economic damages - which would especially limit potential payments to injured infants and senior citizens - is not the answer when the problem is poor investment choices by insurance companies and economic conditions.**

**As a member of the Energy and Commerce Committee, I had the opportunity to participate in hearings on H.R. 5, last year's medical malpractice bill. We never heard a**

medical malpractice insurer testify that passage of that bill would lower premiums or that the federal government should even be allowed to track the effects on medical malpractice premiums if H.R. 5 were to pass. That failure was no surprise given multiple statements made by medical malpractice insurance company officials before state legislatures around the country that tort reform will not lower rates. Even Sherman Joyce, president of the American Tort Reform Association, has said that "We wouldn't tell you or anyone that the reason to pass tort reform would be to reduce insurance rates." Victor Schwartz, general counsel of ATRA, has said, "(M)any tort reform advocates do not contend that restricting litigation will lower insurance rates, and "I've never said that in 30 years."

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Caps won't make medical malpractice premiums affordable but there are other proposals that would make a real difference in providing affordable coverage. As a member of the House Medical Malpractice Crisis Task Force, I had hoped that we would take the opportunity to explore those opportunities instead of being presented with the same bill that we voted on last year, the same bill that the insurance industry itself says won't lower premiums.

Here are many ideas that I believe are worthy of consideration but that, unfortunately, are not included in H.R. 4280. We know that insurance reform in California requiring a premium rollback and improving review had a positive impact in lowering medical malpractice premiums - after tort reform did not. We could have created a Commission on Medical Malpractice Insurance to investigate the real causes for premium increases and consider solutions such as mandatory loss-ratio requirements, experience rating, and a federal reinsurance mechanism. We could have established a certification mechanism to make sure that cases are meritorious, expand Rule 11 sanctions for anyone who falsifies information as part of that process, and encourage arbitration while requiring that savings are passed through by insurers in the form of lower premiums. We could have repealed the McCarran-Ferguson Act that shields medical malpractice insurers from federal antitrust laws. We could have provided a tax deduction to help health care providers and professionals faced with sharp premium increases.

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Instead of considering those initiatives, we are being asked to once again pass legislation that restricts the rights of injured patients and their families to seek legal remedies not just against doctors but against HMOs and other insurers, nursing homes, medical labs, drug companies, medical device manufacturers and others. For the first time, the federal government would intrude on what has always been a state authority to take away consumer rights. Yet, the insurance industry itself refuses to say will doing so will have the effect of lowering rates. It is the wrong answer to a very real problem.

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In the future, I hope that we will be given the chance to look at ways to address insurance industry practices and reduce the incidences of medical malpractice by improving health care quality. In the meantime, we should reject this bill.